

New Hampshire Supreme Court

October 26, 2006

ORAL ARGUMENT CASE SUMMARIES

**CASE # 2**

**State of New Hampshire v. Michael Licks, No. 2005-0717**

Attorney George H. Ostler for the appellant, Michael Licks  
Assistant Attorney General Karen A. Gorham, for the appellee,  
State of New Hampshire

**Legal Issues Presented:**

- Was the defendant “unlawfully detained” by the police officer in the parking lot? Should the trial judge have suppressed the evidence that resulted in the defendant being charged with Driving Under the Influence of Intoxicating Liquor after his encounter with the police officer?
- Looking at all the circumstances of the case, would it have been reasonable for Licks to assume he was free to go during his encounter with the police officer? Or, did the encounter amount to “seizure,” which would require the police officer to have probable cause to think that a crime was about to be committed, or had been committed? Or that Licks might be in distress and need care?

**Facts of the Case**

Shortly after midnight on February 18, 2005, a uniformed Lebanon Police Officer was on patrol outside Club Electra. The officer, who was in a marked police cruiser, saw a Lincoln Town Car in the parking lot, running, with a person “slouched” in the driver’s seat. The car was legally parked. The police officer approached the Lincoln to make sure the driver was “all set” and to “check what he was doing,” according to a transcript of trial testimony. The officer testified: “You never know if it’s a medical issue or something else.” He shone his police issued Mag-Lite on the defendant, Michael Licks, and, according to the defense, signaled for Licks to roll down the window, which he did. The police officer said he was unsure if he prompted Licks to roll down the window, but, if anything, did get his attention with a wave of his hand.

According to court record, the police officer then asked Licks, “Are you all set?” The officer contends he then detected the odor of “intoxicants” and processed Licks for Driving Under the Influence of Intoxicating Liquor (DUI). Licks was convicted of DUI after a trial before a judge in Lebanon District Court, fined \$600 and had his license revoked for 12 months.

This appeal to the Supreme Court followed.

### **Legal Arguments**

On appeal, Licks argues that he was “unlawfully detained” by the police and that the “fruits of unlawful detention” that led to the DUI charge against him should have been suppressed by the trial judge. Licks contends the officer in the parking lot had no evidence or suspicion that a crime had been committed, or was about to be committed, that would have justified his detention without a warrant. Licks also argues that there was no indication that he was in need of “community caretaking,” which under the law would allow the police officer to detain a person without a warrant if the officer had grounds to believe that there was “an emergency at hand and an immediate need for protection of life or property.”

The state contends that when Licks rolled down the window, the police officer “noticed bloodshot eyes and a moderate odor of alcohol.” He then asked Licks for his name and date of birth. The state contends that the initial contact with the police officer was “consensual.” Contrary to what the defense contends, the state says the encounter did not amount to a warrantless “seizure,” which under the law could only be justified if the officer had “probable cause” or was acting in “community caretaking.”

The state says this was not a “seizure” because Licks could have reasonably concluded he was free to leave and there were “no factors” to suggest his liberty was in any way restrained. The state says the police officer did not ask Licks to get out of the car and turn off the vehicle and that there was no show of force or authority that should have led Licks to conclude he could not leave—all factors that courts in other cases have used to define circumstances when a person could reasonably assume they were being “detained” by the police. The state contends Licks could have safely backed the car out of the parking space; but instead, he rolled down the car window and chose to talk with the police officer.

The defense contends in court papers that the police officer “engaged in a show of authority to a degree that no reasonable person would have felt free to ignore the officer or leave the area, and Mr. Licks submitted to this show of authority.”

***This summary was prepared by the Court Communications Office, State of New Hampshire, Judicial Branch. 09/27/06***